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SEP 1 - 2009

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Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, Suite TW-A325
Washington, DC 20554

August 31, 2009

Re: Comments - NBP Public Notice #1
GN Docket Nos. 09-47, 09-51, 09-137

Dear Ms. Dortch:

The Federal Communications Commission (FCC) Notice requests comments on: (1) the general form, characteristics, and performance indicators that should be included in a definition of broadband; (2) the thresholds that should be assigned to these performance indicators today; and, (3) how the definition should be reevaluated over time.

The NYS Council for Universal Broadband through an inter-agency collaborative effort released the New York State Universal Strategic Broadband Roadmap for New York (Roadmap) in May 2009. The Roadmap establishes guidelines and goals for broadband access, increasing digital literacy, fostering economic development and job creation, maximizing e-government opportunities, and increasing overall household adoption rates. The Roadmap envisions universal broadband availability in all communities throughout the state with a speed of at least 1 Mbps. This threshold speed is a dynamic number and it is anticipated to move upward as digital literacy, demand for higher bandwidth services, and new applications (such as e-healthcare) develop. Recognizing that the 1Mbps speed does not exist in all areas at this time, it is the target on which the state's efforts will be focused in the shorter term.

While faster speeds may be achievable in more densely populated areas, thresholds should not be set so high as to make it economically infeasible in rural areas. The FCC should consider the appropriate balance between regulation and reliance on competition. We recommend that the FCC rely on the market in the first instance and that government intervention be tailored to addressing important public policy issues that the market has not addressed. The following represents the responses on behalf of the Office of the Chief Information Officer/Office for Technology (CIO/OFT) and the Public Service Commission (PSC).

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1. Form, Characteristics, and Performance Indicators

- a. The definition of broadband should be consistent with the speed tiers adopted by the FCC in WC Docket No. 07-38; FCC 08-89.¹ The definition should provide support to allow smaller businesses to flourish through access to and use of broadband.
- b. Any definition should recognize that rural areas need sufficient speeds and services, but also recognize that urban markets naturally are developing at a more rapid pace. The definition should also take into account the diverse needs of business and residential customers as self-identified by consumers.
- c. An applications based definition recognizes broadband service continues to replace traditional wireline voice service, as well as expanded video services. The definition should address the performance indicators listed in 1(f). Such an applications based definition may present technical issues for purposes of assessment and monitoring.
- d. The speed tiers adopted by the FCC in WC Docket No. 07-38; FCC 08-89.
- e. The segments of the network to be measured by the performance indicators are dependent on the application(s) used by the consumer and the load on the network. Such measurements should include tools that allow consumers to measure the performance of their network connection.
- f. These factors should be evaluated for relevant applications, such as voice and video, which would be affected by these factors. As voice applications over broadband become more prevalent, networks should be designed to accommodate peak load without jitter and latency. Broadband networks should also be designed to a capacity that avoids congestion during periods of peak usage.
- g. The performance indicators should be based upon the network being used, either wired or wireless. The FCC should use the performance indicators to evaluate whether the networks are properly defined to accommodate current and anticipated consumer demand and application interfaces.
- h. Although evaluating performance indicators may pose technical and administrative issues, access to this data will enable the FCC and providers to better assess broadband service both nationally and on a local level to better respond to the needs of consumers.

¹ In the Matter of Development of Nationwide Broadband Data to Evaluate Reasonable and Timely Deployment of Advanced Services to All Americans, Improvement of Wireless Broadband Subscribership Data, and Development of Data on Interconnected Voice over Internet Protocol (VoIP) Subscribership, WC Docket No. 07-38; FCC-08-89.

2. Thresholds

Any prescriptive standards should take into consideration the marketplace factors that affect the diversity of providers such as telephone and cable companies serving rural communities. For example, a ubiquitous prescribed download speed might be too low for one type of architecture (fiber to the premises optical networks) while beyond the technical capability for certain wireless networks currently under development. Additionally, any prescriptive standards should take into consideration the consumers' differing expectations based upon the platform used to access the applications. Broadband is more than just speed, it is a combination of speed and quality of service (e.g. jitter, latency, etc). Any broadband performance metrics should be based upon network (e.g. wired; wireless) and the applications being accessed by the consumer.

3. Updates

- a. The definitional data should be incorporated into the semi-annual filing under Form 477 which could provide a vehicle for the FCC and states to evaluate and update the definition.
- b. The issue of updating the definition should be evaluated annually.
- c. The thresholds should be re-evaluated as new technologies and applications are deployed. The thresholds should also be evaluated against the data the FCC compiles from the International Comparison pursuant to the Broadband Data Improvement Act (Pub. Law 110-385) to evaluate and guide broadband deployment in the U.S.
- d. Incorporating the data into the Form 477 filing will reduce any issues that could affect the FCC's ability to collect and publish meaningful data on broadband deployment and adoption.

Respectfully submitted,



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